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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,023	10/28/2003	Michael J. Lehr	31356.30005	4272
26781 7590 03/28/2008 BROUSE MCDOWELL LPA 388 SOUTH MAIN STREET SUITE 500 AKRON, OH 44311				
EXAMINER				
FRISBY, KESHA				
ART UNIT		PAPER NUMBER		
3714				
NOTIFICATION DATE		DELIVERY MODE		
03/28/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

iplaw@brouse.com

### Office Action Summary

**Application No.**

10/695,023

**Applicant(s)**

LEHR, MICHAEL J.

**Examiner**

KESHA FRISBY

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-7,9-13,15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9-13,15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/888)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Status of Claims***

1. After the amendment filed on 12/19/2007, claims 1, 2, 4-7, 9-13, 15 & 17-20 are pending in this application.

***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 2, 4-7, 9-13, 15 & 17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In the present case, the claimed invention does not produce a concrete result. In order for a result to be concrete there must be a reasonable expectation of success, or the result must be assured. At least the limitation, "wherein the allegories, utilizing archetypes, motivate the audience to action" fails to produce a concrete result. Although one user may achieve some appreciation, this is not a guaranteed result for all users. There is no evidence to suggest that this result is even expected in a vast majority of users, and as such does not meet the requirements of producing a reasonable expectation of success either.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**3. Claims 1, 12, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bajer et al. (US 6,736,642) in view of Bro (US 5,722,418) and Siler (U.S. Publication Number 2002/0061505).**

Claim 1 discloses all of the limitations in the previous office action in addition to newly amended recitations. Bajer, as modified by Bro, discloses wherein the at least a second allegory is interrelated with the first allegory (column 10 lines 6-41: the user must interact with a simulation in order to validate previous assumptions made in the Awareness scenario), wherein the second allegory is a progression from the first allegory (column 10 line 14 - column 13 line 22 of Bajer) and such that the second allegory builds (column 10 lines 14-26 & column 13 lines 16-32) on the first allegory and the comments (feedback) and questions from the first allegory (what happens next?). *Bajer et al/Bro does not teach wherein the allegories are represented by at least one symbol, wherein the at least one symbol is representative of an archetype and the concept of intuitively.* However, Siler teaches wherein the allegories are represented by at least one symbol (paragraph 0077: scenarios), wherein the at least one symbol is representative of an archetype (paragraph 0077) and the concept of intuitivity (paragraphs 0016 & 0034). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include wherein the allegories are represented by at least one symbol, wherein the at least one symbol is representative of an archetype, as disclosed by Siler, incorporated into Bajer/Bro in order to instruct users in creating their own materials and in constructing a symbolic multi-dimensional physical model.

With regard to claim 12, and the limitation wherein an associated instructor provides multiple assumptions, the assumptions chosen from the group comprising 1) emotions are more

powerful... etc., Bajer discloses that a user may enter assumptions (Col. 2: 44-45). The assumptions entered by the user could be any assumption that a user could think of, including those recited in the claim. Additionally, the user of the invention may be any type of user capable of using the invention, including instructors, students, etc.

With regard to claim 17, and the limitation wherein the questions do not have demonstratively right or wrong answers, Bajer discloses that questions may be provided in order to collect evidence (Col. 2: 60-65). A question asked for the purpose of collecting evidence would not have a demonstratively right or wrong answer.

With regard to claim 19, and the limitation wherein the questions, answers, and comments occur in real time, Bajer discloses that the scenario may be presented in real-time to a user, and that a user may be automatically prompted to interact (Col. 2: 53-59), and that the user interface may be a dynamic, real-time interface (Col. 9: 17-26).

4. **Claims 2, 4-7, 9-11, 13-16, 18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bajer et al./Parry/Bro and further in view of Siler.**

Claims 2, 4-7 & 9-11 discloses all the limitations in the previous office action in addition to newly amended recitations. Bajer et al., as modified by Parry and Bro, discloses wherein the at least a second allegory is interrelated with the first allegory (column 10 lines 6-41: the user must interact with a simulation in order to validate assumptions made in the Awareness scenario), wherein the second allegory is a progression from the first allegory (column 10 line 14 - column 13 line 22 of Bajer) such that the second allegory builds (column 10 lines 14-26 & column 13 lines 16-32) on the first allegory and the comments (feedback) and questions from the first allegory (What happens next?), wherein the at least a third allegory is interrelated with the

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first allegory and the second allegory (column 10 lines 6-41), wherein the third allegory is a progression from the first allegory and the second allegory (column 10 line 14 - column 13 line 22 of Bajer) and such that the third allegory builds on the first allegory and the second allegory and the comments and questions from the first allegory and the second allegory (column 10 lines 27-41), wherein the final allegory is interrelated with the previous allegories (the combination of all three sections) and such that the final allegory builds on the previous allegories and the comments and questions from the previous allegories (column 10 lines 14-41), wherein the final allegory is a progression from the previous allegories (column 10 line 14 - column 13 line 22 of Bajer) (claims 4 & 9). *Bajer et al./Parry/Bro does not teach wherein the allegories are represented by at least one symbol and wherein the at least one symbol is representative of an archetype (claims 5, 7 & 10) and the concept of intuitivity.* However, Siler teaches wherein the allegories are represented by at least one symbol (paragraph 0077) and wherein the at least one symbol is representative of an archetype (paragraph 0077) (claims 5, 7 & 10) and the concept of intuitively (paragraphs 0016 & 0034). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include wherein the allegories are represented by at least one symbol, wherein the at least one symbol is representative of an archetype, as disclosed by Siler, incorporated into Bajer/Parry/Bro in order to instruct users in creating their own materials and in constructing a symbolic multi-dimensional physical model.

With regard to claims 13 and 15, and the limitation wherein the at least one assumption is chosen from the group comprising 1) emotions are more powerful... etc., Bajer discloses that a user may enter assumptions (Col. 2: 44-45). The assumptions entered by the user could be any assumption that a user could think of, including those recited in the claim. Additionally, the user

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of the invention may be any type of user capable of using the invention, including instructors, students, etc.

With regard to claim 18, and the limitation wherein the questions are not analyzed for right or wrong answers, Bajer discloses that questions may be provided in order to collect evidence (Col. 2: 60-65).

With regard to claim 20, and the limitation wherein the questions, answers, and comments occur in real time, Bajer discloses that the scenario may be presented in real-time to a user, and that a user may be automatically prompted to interact (Col. 2: 53-59), and that the user interface may be a dynamic, real-time interface (Col. 9: 17-26).

#### ***Response to Arguments***

5. Applicant's arguments filed 12/19/2007 have been fully considered but they are not persuasive. On page 13, the applicant's representative asserts that Siler reference teaches away from the present invention. However, the examiner disagrees that the Siler reference teaches away from the present invention because Siler's disclosure does not criticize, discredit, or otherwise discourage the solution claimed. The applicant's representative also states that "nothing in Siler intuitively interrelates or creates an intuitive progression between allegories using archetypes". The Siler reference teaches the concept of intuitively and the Bajer et al. reference teaches the progression between allegories using archetypes. See rejection above. As far as Siler not indicating that a primary purpose of his invention is to encourage action on the new idea is a violation of 35 U.S.C. 101. This claim limitation is not concrete. Please refer to the rejection above for more details.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KESHA FRISBY whose telephone number is (571)272-8774. The examiner can normally be reached on Monday-Friday 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. F./

Examiner, Art Unit 3714

/Ronald Laneau/

Supervisory Patent Examiner, Art Unit 3714

03/17/08